

DOCUMENT RESUME

ED 233 281

CG 016 860

AUTHOR Hayden, Richard J.
TITLE The Right to Privacy for Juveniles: A Review for School Counselors.
PUB DATE Dec 82
NOTE 64p.
PUB TYPE Guides - Non-Classroom Use (055) -- Information Analyses (070) -- Legal/Legislative/Regulatory Materials (090)
EDRS PRICE MF01/PC03 Plus Postage.
DESCRIPTORS Adolescents; Children; Civil Rights; *Confidentiality; Constitutional Law; Counselor Client Relationship; *Counselor Role; Elementary Secondary Education; *Laws; Parent School Relationship; *Privacy; *School Counseling; School Counselors; State Legislation; State of the Art Reviews; *Student Rights; Student School Relationship

ABSTRACT

This paper, addressed to school counselors, provides background information concerning the rights of privacy for juveniles. A brief introduction notes the recent changes in juvenile rights and the expansion of the school counselor role and responsibility. The first section presents a general statement of the right of privacy primarily through English common law, American case law and the Warren and Brandeis Right to Privacy article (1890), which still acts as a catalyst in contemporary case law and legislation. The second section reviews the four categories of right of privacy as defined by Prosser in 1960: Appropriation - of a person's name or likeness for the defendant's benefit and advantage; Intrusion - on the plaintiff's solitude by intentionally and purposely prying; Public Disclosure - of private facts; and False Light - publicity which creates false light in the public eye. The third section discusses the extension of the right of privacy to juveniles as clients of school counselors; summaries of case law concerning the First, Fifth, Ninth, Fourteenth, and Twenty-Sixth Amendments are included. The fourth section provides general application of confidential and privileged communications by school counselors resulting from the right of privacy of student, parent, and school staff clients. The appendixes provide a list of states with school counselor privileged communication, along with brief summaries of the laws in those states; a table of the legal cases cited; and a list of the references cited. (WAS)

 * Reproductions supplied by EDRS are the best that can be made *
 * from the original document. *

ED233281

THE RIGHT TO PRIVACY FOR JUVENILES
A REVIEW FOR SCHOOL COUNSELORS

December, 1982

by

Richard J. Hayden, M.A.

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)

- ☒ This document has been reproduced as received from the person or organization originating it.
- ☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS
MATERIAL HAS BEEN GRANTED BY

Richard J. Hayden

TO THE EDUCATIONAL RESOURCES
INFORMATION CENTER (ERIC)."

Administrative Intern
Office of Associate
Superintendent, Instruction
Amphitheater School District
701 W. Wetmore Rd.
Tucson, Arizona 85707

Graduate Associate
Counseling and Guidance
Department
University of Arizona
Tucson, Arizona 85712

CG 016860

TABLE OF CONTENTS

SECTIONS

	<u>Page</u>
I. GENERAL STATEMENT OF RIGHT OF PRIVACY	2
II. PROSSER'S FOUR FORMS OF RIGHT OF PRIVACY.	5
Prosser's First Form: Appropriation.	5
Prosser's Second Form: Intrusion.	6
Prosser's Third Form: Public Disclosure.	8
Prosser's Fourth Form: False Light	11
III. EXTENSION OF RIGHT OF PRIVACY TO INCLUDE JUVENILES	13
IV. SCHOOL COUNSELORS, CONFIDENTIALITY, AND PRIVILEGED COMMUNICATION	19
V. SUMMARY	28
NOTES	31
APPENDIX I: STATES WITH SCHOOL COUNSELOR PRIVILEGED COMMUNICATION	49
APPENDIX II: TABLE OF CASES CITED	53
APPENDIX III: REFERENCES CITED	56

Juveniles have many more civil and statutory rights today than they have had historically. The juveniles Right to Privacy has been expanded through three basic means: first, by federal and state court decisions, such as Foe v Vanderhoof and the Danforth decision; second, through legislation, including parts of Public Law 94-142, Education for all Handicapped Children Act, and the Family Educational Rights and Privacy Act; and third, through changes in local practices. Because the juvenile has more acknowledged rights, those providing services need to recognize those rights, separate from their parents, to a greater degree. This expansion of rights has paralleled the expansion of the school counseling role from a strictly educational-vocational orientation to one including crisis and personal problem counseling as well.¹

This rise in the difficulty of problems has increased the need for greater confidentiality outside the counseling situation. Because of the increased juvenile rights, and the greater need for better counseling skills to help with the larger problems of the students these days, the professional stature of the counselor has been raised. The rise in professional stature means that more is expected from the counseling relationship than was previously needed. These expectations also raise the potential of liability in civil and criminal actions as people expect more quality from the counseling relationship.²

Because these rights of the juvenile exist, the professional needs to be continually updated on the changing nuances of the interpretation of the law. Historical background of the basic rights is needed by counselors and appropriate responsible administrators, so that new material may be recognized and processed. This paper provides some of the crucial background about the Rights of Privacy and confidentiality within the context of school counseling.

This paper will deal with the following topics: first, a general statement of the Right of Privacy as presented by Warren and Brandeis in 1890;³ second, the four categories of Right of Privacy as defined by Prosser in 1960;⁴ third, the extension of that Right of Privacy to juveniles as clients of school counselors; and last, the general application of confidential and privileged communications by school counselors, because of Right of Privacy of students, parents, and school staff clients.

GENERAL STATEMENT OF RIGHT OF PRIVACY

People's interest in being free from physical attack, injury, and physical pain inflicted by someone else is almost universal. In all common law jurisdictions it is protected by law.⁵ Although the pain suffered by each victim of physical attack may vary from case to case, all physical evidence of the attack is objective and can be measured. Injury from invasion

of privacy is not always so easy to evaluate objectively. Although everyone would seemingly need some sort of protected life space, the amount of seclusion needed differs from individual to individual. One person may be pleased and flattered by publicity, but another may become physically or mentally ill because of disclosures. Historically, the courts have been slow to rule in favor of Right of Privacy settlements based upon a "state of mind" of the individual as a result of publicity.⁶ The court cases were decided on the basis of defamation,⁷ or the invasion of some property right,⁸ or a breach of confidence or implied contract.⁹

In 1890, Samuel D. Warren and Louis D. Brandeis wrote an article published in the Harvard Law Review with the title "The Right to Privacy."¹⁰ Their stated purpose was:

to consider whether the existing law affords a principle which can properly be invoked to protect the privacy of the individual, and, if it does, what the nature and extent of such protection is.¹¹

They also stated that:

the common law secures to each individual the right of determining, ordinarily, to what extent his thoughts, sentiments, and emotions shall be communicated to others.¹²

Another principle in the article was that:

the right of property, in its widest sense including all possessions, including all rights and privileges, and hence embracing the right to be an inviolate personality, affords alone that broad basis upon which the protection which the individual demands can be rated.¹³

The catalyst for this article was the problem of the press and the "yellow journalism" of that time.¹⁴

The growing excesses of the press made a remedy upon such a distinct ground essential to the protection of private individuals against the unjustifiable infliction of mental pain and distress.¹⁵

Prior to the time this article was written, the courts demonstrated a pattern of leaning toward a recognition of the right to be left alone.¹⁶ There have been many legal articles against¹⁷ and many more in favor¹⁸ of the Right to Privacy. In 1902 the New York Court of Appeals rejected the Right of Privacy.¹⁹ The uproar from this case encouraged the New York State legislature to pass a 1903 law in favor of the Right of Privacy.²⁰ It was both a misdemeanor and a tort to make use of the name, portrait, or picture of any person for "advertising purposes or for the purposes of trade" without his written consent.²¹ This law is still in effect in New York, and is well established with over a hundred decisions based on it.²²

While the New York courts were handing down major decisions, the leading case was actually decided in 1905 by the Georgia Supreme Court. Pavesich v New England Life Insurance Company²³ presented the case of an advertising campaign which used the plaintiff's name and picture, and printed a false testimonial from him. Georgia used the New York statute, rejected the Roberson v Roberson Folding-Box Company decision from the 1902 New York Court of Appeals, accepted the Warren

and Brandeis opinions, and recognized the principle of the Right of Privacy in deciding for the plaintiff.

The court opinions were still divided between the sides for and against a principle of Right to Privacy until 1939, when the Restatement of Torts was published.²⁵ The "tide set in strongly in favor of recognition, and the rejecting opinions began to be overruled."²⁴ There are only four states which have rejected the right of privacy in the courts, and which have said instead that a change in the old common law must be made by the legislature rather than the courts.²⁶

PROSSER'S FOUR FORMS OF RIGHT OF PRIVACY

Prosser's First Form: Appropriation

William Prosser, in the Handbook of the Law of Torts,²⁷ and an earlier article in the California Law Review,²⁸ described a set of four forms of the invasion of privacy tort actions. The first is APPROPRIATION,²⁹ or the using, "for the defendant's benefit or advantage, of the plaintiff's name or likeness."³⁰ This was the form named in the New York Civil Rights Law in 1932 and the Georgia Supreme Court case in 1905.³¹ The intention must be to steal the plaintiff's identity for some advantage, or some "tortious use."³² The name may be used for a novel, but it needs to be proved that the identifiable name and personality were placed there for the defendant's advantage (to sell more

books?) to be a tort action.³³ A fictional figure in a novel may have the plaintiff's character, occupation, general outline of his career, and many real incidents (as long as the correct name is withheld) without becoming a cause for tort action under Appropriation.³⁴

Prosser's Second Form: Intrusion

The second form is INTRUSION,³⁵ and includes examples of physical intrusions on the plaintiff's physical solitude or seclusion,³⁶ into a person's home,³⁷ or into a place of business,³⁸ electronic eavesdropping,³⁹ and peeping into windows.⁴⁰ The closest counseling application would seem to be the one of tape-recording counseling sessions without permission.⁴¹

The principles included in the Intrusion form include the purposeful act of inflicting mental distress on another person.⁴² (Counselors may be involved after the fact with clients suffering mental distress effects.) When mental disturbance is treated by itself in the courts, then extreme outrage, non-trivial liabilities, and serious mental harm (shown preferably by physical illness effects) are required.⁴³ Dean Prosser states that when privacy, intrusion, and "intentionally inflicted mental distress" are taken together in a single tort action, the aforementioned requirement for mental disturbance is no longer necessary.⁴⁴

Professor Bloustein adds the dimension of individuality and human dignity to this form. He would like to have Right to

Privacy defined in a general ethical sense of "an affront to human dignity" rather than the more specific points described by the four points of Prosser. Intrusion is "demeaning to individuality."⁴⁵ A woman's legal right to experience childbirth, without the public watching,⁴⁶ is not dependent on protecting her emotional stability, but instead it is dependent on the desire to respect her rights for individuality and human dignity.⁴⁷ Prosser stated in a reaction article that he had not seen a particular court case which had been decided in this manner.

The constitutional protections of the Fourth Amendment against unreasonable search and seizure by all government agents (the Fourteenth Amendment extends the obligation to States, as well) are based on protecting against intrusions into privacy. It doesn't provide relief in cases of intrusions by private citizens,⁴⁸ but public and private intrusions of privacy are treated as equally wrong. The Fourth Amendment would seem to frame arguments for the intrusion principle for the private individual, as well.

The Intrusion Principle is also incorporated into the Family Educational Rights and Privacy Act of 1974 (FERPA) through its protection of the family right to limitation of access to student school records to people with a "legitimate educational interest."⁴⁹ FERPA, also called the Buckley Amendment, primarily deals with Prosser's last two forms of Invasion of Privacy, but the sections restricting most people from

looking at student educational records⁵⁰ would seem to show recognition of the Intrusion Principle, when applied to government agencies not named in FERPA (including police departments and school board members).

Conditions for Intrusion include:⁵¹ (1) that there must be purposeful prying or intrusion; (2) that the intrusion must be something which would be offensive or objectionable to a reasonable person; and (3) that on the public street, the plaintiff has no legal right to be alone, and someone who is just following and watching is not invading privacy.⁵² Someone who takes a picture of a couple kissing on the public street may publish it as public information.^{52a}

Prosser's Third Form: Public Disclosure

The Buckley Amendment provisions⁵³ and confidentiality of counseling information from the client are directly related to the third form of Right of Privacy: PUBLIC DISCLOSURE of Private Facts.⁵⁴ It covers publicity of private information, even though the information is true and there is, or is not, a case for defamation.⁵⁵

The leading case is Melvin v Reid,⁵⁶ where the defendant made a movie about the plaintiff's former life (forgotten for seven years) as a prostitute. She had made a new life, and was disturbed, offended, and humiliated in her community. The case was decided on the plaintiff's right to privacy, the Warren and Brandeis article, and a California Constitutional provision

which guarantees "unalienable rights" of "enjoying and defending life and liberty; and pursuing and obtaining safety and happiness."⁵⁷

Forced disclosure is included in the Fifth Amendment privilege against self-incrimination, the Miranda v Arizona decision (which directs police questioning of suspects),⁵⁸ and the First Amendment values of freedom of speech and freedom of association (which forces the government to show an "overriding and compelling" interest in order to force disclosure of organizations joined and who the members of those organizations are).⁵⁹ The Privileged Communications statutes extend this Right of Privacy to confidential relations, when the information might have been required to be stated in court. Restrictions on electronic surveillance devices are also covered.⁶⁰

Limits to this form of right of privacy fall into three areas.⁶¹ The first is that the disclosure of the private facts must be a public disclosure, and not a private one. Posting a notice (public disclosure) naming a victim of rape,⁶² or yelling a fact of someone else's indebtedness on a public street is not allowed. Telling about the indebtedness to the plaintiff's employer,⁶³ or to any other individual, or even to a small group⁶⁴ (private disclosure) is allowed as long as there is not a breach of contract, trust, or confidential relation.⁶⁵ In deciding whether to tell someone information contained in a student file, in a case not listed specifically in

FERPA, it must be a private disclosure, not a public one, and a "demonstrated educational interest" must be shown.⁶⁶

The second limit to claiming disclosure is that the facts given must be private facts, not public facts. If the facts are public record (like marriage license date and names, or birth or death records), then the plaintiff cannot complain. If, however, personal information from a counseling session or student educational record is copied and made public (without permission), then the situation falls under Public Disclosure, and FERPA regulations.⁶⁷

The third limit is that the public disclosure must be something which would be offensive or objectionable to a reasonable person.⁶⁸ A newspaper story about a camping trip on Mt. Lemmon should not shock an ordinary and reasonable man, but if a description of sexual relations with his wife, while on the trip, was included, then this would be objectionable.

A specific school-related case is the one of Kenny v Gurley in Alabama in 1923. A girl was sent home with a note to the parents only, which said she could never return to the school, because of a health problem. The appeal court ruled that the privileged communication was handled appropriately.⁶⁹

Another case in Washington State in 1955 produced a set of guidelines for judging whether the privileged communication has been handled correctly, and without invading the privacy of people involved:

- (1) The communication must be made in good faith;
- (2) It must promote an acceptable interest;
- (3) The statement is limited in scope to this purpose;
- (4) The occasion for transmittal is proper;
- (5) Publication has been made to proper parties in a proper manner.⁷⁰

It would seem that the reports and letters regarding student evaluation, grades, conduct, and other information should use these guidelines before letting them become official student educational records or notes sent home.

Prosser's Fourth Form: False Light

Prosser's fourth principle is publicity which creates FALSE LIGHT in the public eye.⁷¹ Dean Prosser described the first case of this form as Lord Byron v Johnston,⁷² in which the poet, in 1816, sued to stop publication of a bad poem, written by someone else, but credited to him. Prosser also indicated that these "false light" cases all involve reputation and "obviously differ from those of intrusion, disclosure of private facts, or appropriation, in this way."⁷³ Dr. Bloustein of New York University Law School has stated that Dean Prosser's forms are too limited, and they should be combined into one broad action called "An Affront to Human Dignity." His approach includes not only reputation, but also the value of the "assault on the individual personality and dignity."⁷⁴

Generally the principle of "False Light" includes three kinds of cases.⁷⁵ The first involves the plaintiff's picture,

which is used to show some connection with a book or article, when there is no personal connection at all.⁷⁶ An example of this might be a picture of an honest Superintendent of Schools that appears among others, and without comment, in a story about corrupt school officials in the state. Another example of this is one of the right or wrong use of the picture. In one city newspaper, a picture was published with an article. It was a man, in a public place, hugging his wife. The photograph was published with an article, but with no particular reference to the picture in the article.⁷⁷ In another newspaper, the same pose taken at the same time was used to show the "wrong kind of love consisting wholly of sexual attraction and nothing else."⁷⁸ The complaint about the first article and picture, against the publisher, was dismissed,⁷⁹ and the second case succeeded against the other publisher, because of the connection with reputation.⁸⁰

The second kind of "false light" case involves publicly giving false credit for some opinion or statement, such as in books or articles,⁸¹ unauthorized use of a name on a petition,⁸² or when a candidate for office,⁸³ or filing suit in the plaintiff's name without permission.⁸⁴ The last kind of case includes those in which the plaintiff's name, photograph, or fingerprints are placed in display with similar items connected with convicted criminals, when the plaintiff had never been convicted of a crime.⁸⁵

EXTENSION OF RIGHT OF PRIVACY TO INCLUDE JUVENILES

What about extension of Prosser's four forms of tort action? America seems to be alone in the coverage under Right of Privacy in the common law countries. It has never been recognized separately in England, Canada, New Zealand, Australia, or "other jurisdictions sharing the heritage of common law."⁸⁶ Some courts have recognized the Right of Privacy on "common law,"⁸⁷ Others on "constitutional mandate,"⁸⁸ and others on "natural law."⁸⁹ Professor Bloustein, as mentioned before, feels it should be based on cases involving "an affront to human dignity."⁹⁰ Dean Prosser answered the professor's claim with the statement that there doesn't seem to be any case to support that statement, but that it doesn't mean that there won't be one later as more cases and situations present themselves for decision.⁹¹

An extension of the right of privacy to minors has been forming for a long time. The idea of children as humans within the law was brought into focus in 1874 in New York City, when the leading child abuse case was tried under the cruelty to animals act of New York City. New York state later passed legislation which provided better protection for children under child abuse.⁹² Another focus point occurred in 1971 when the Twenty-Sixth Amendment was passed and gave the eighteen-year-old the right to vote.⁹³ The eighteen-year-old gradually has been given the title of adult at that age in most states.

During those intervening years between 1874 and 1971, many court jurisdictions decided that children were "persons" under the Constitution, and "in loco parentis" procedures were being adjudged and legislated down to a minimum.⁹⁴

The Supreme Court decided that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone," and extended many fundamental rights to juveniles,⁹⁵ including: First Amendment rights to free speech⁹⁶ and free exercise of religion.⁹⁷

A few early cases recognized some procedural and equal protection rights of children,⁹⁸ but the In re Gault ruling allowed for quicker progress.⁹⁹ Gerald Gault's parents challenged the Arizona Juvenile Code's lack of due process procedures, and the United States Supreme Court listed the minimum due process requirements for juveniles in cases where prison time is possible.¹⁰⁰

Three years later the In re Winship¹⁰¹ decision handed down by the Supreme Court reversed a New York Family Court decision (appealed from the New York Supreme Court),¹⁰² because the case was decided by just a "preponderance of the evidence," as required by the New York Family Court Act of the time.¹⁰³ The Supreme Court decided that, if a juvenile is charged with an act which would be a crime if committed by an adult, even a juvenile should receive a conviction with proof "beyond a reasonable doubt."¹⁰⁴

Two decisions helped to further shape a person's right to privacy. An adult's right to privacy in family relationships was strengthened with the Griswold v Connecticut U. S. Supreme Court decision.¹⁰⁵ The minor's right to privacy was recognized in Merriken v Cressman.¹⁰⁶ A junior high school student wanted an injunction against the start of a school's drug prevention program whose purpose it was to aid school authorities in finding potential drug abusers. The problem was not the concept of drug prevention, but the method of identification through the use of a questionnaire which asked questions about family relationships and rearing.¹⁰⁷ There was no mention of drugs in the questionnaire, and no attempt was made to define what was meant by drug abuser, what a potential drug user was, or what was the correlation, if any, of the testing methods with the results wanted. The Merriken court concluded that the questionnaire was of a "highly personal nature," (private facts), and the way used to inform the students and their parents about the program's methods and goals did not approach the status of "informal consent." The District Court issued the injunction against using the questionnaire and said, "the fact that the students are juveniles does not in any way invalidate their right to assert their constitutional right to privacy." The court strengthened its stand when they stated:

This Court would add that the right of privacy is on an equal or possibly more elevated pedestal than some other individual Constitutional rights

and should be treated with as much deference as free speech.¹⁰⁸

Because the court analyzed the methods as well as the stated purposes of the test, school testing programs generally should be clearly outlined, have a stated purpose, and use proven and effective methods.¹⁰⁹ A minor's rights may be violated if the student is separated from regular class placement, in the I.E.P. process, for example, because of the use of unreliable evaluation tests or methods, or if there is no correlation between the tests' validity areas and the final placement. Physical segregation of misplaced "emotionally-disturbed problem children" might heighten the emotional and psychological differences which are the reason for their behavior difficulties.¹¹⁰

A study of a related problem, confidentiality of records, caused a change which strengthened the A.P.G.A. Ethical Standards.¹¹¹ The results showed that school counselors' were likely to release school records in 1962 to many different agencies without looking at the validity of school test scores when applied to non-school uses.¹¹² A follow-up in 1970¹¹³ showed great improvement in confidentiality, but even FERPA only requires permission to disclose to a third party, without any interpretation required, except in court. At times state laws required the explanation be made by a qualified professional. No mention is made of validity of the school test scores for non-school uses.¹¹⁴ This is related to the False Light form in Privacy.

Court decisions have increased the constitutional rights of juveniles beyond school records. Privacy rights of minors were strengthened with several recent decisions about abortion. In Foe v Vanderhoof,¹¹⁵ a Colorado statute required parental consent for an abortion, and the minor plaintiff felt that the law violated her right to privacy as guaranteed by the First, Ninth, and Fourteenth Amendments. The two important issues presented were as follows: first, did the adult right to privacy for abortion obtained from Roe v Wade¹¹⁶ and Doe v Bolton¹¹⁷ apply to minors? Second, did any compelling state interests¹¹⁸ justify the difference in treatment between minors and adults? The Foe Court ruled in favor of the right of privacy. It used the Supreme Court rationale from Roe v Wade when it called privacy a right which is "a personal one guaranteeing to the individual the right to make basic decisions concerning his or her life without interference from the government."¹¹⁹ They concluded that "minors are entitled to the personal right as well as adults."¹²⁰ The Foe Court cited Coe v Gerstein¹²¹ when it declared, "a pregnant woman under eighteen years of age cannot, under the law, be distinguished from one over eighteen years of age in reference to 'fundamental', 'personal', constitutional rights."

The United States Supreme Court, in Planned Parenthood of Central Mo., et al. v Danforth,¹²² upheld the minor's right to privacy in an abortion situation. It held that:

Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights.¹²³

On a different subject with the topic of minor's constitutional rights, the desire to "act in the best interests of the child" is usually the reason given for state or local intervention in the lives of juveniles. In Wisconsin v Yoder,¹²⁴ an Amish father sued to find whether his son could be required by the state to attend school past the eighth grade, if the values taught in school were against the Amish religious value, and they had alternate religious education in Bible reading required, and the grammar school education was sufficient for an Amish farmer. Mr. Justice Douglas wrote that although the father was being listened to in the case, no record was in evidence that the boy's wishes were to be considered. "The child, therefore, should be given an opportunity to be heard before the state gives the exemption which we honor today."¹²⁵

On the other hand, the Foe court wrote that some state regulations infringing on the right of privacy may be appropriate:

The state may infringe on the constitutional right to privacy; however, before it may do so, it must demonstrate interests so compelling as to justify the intrusion on the fundamental right involved. The legislation must be narrowly drawn and confined or restricted to the compelling state interests.¹²⁶

Minors' constitutional rights, especially privacy, have gained attention and strength through the amalgam of court decisions. While the right of privacy is not absolute,¹²⁷ it is constitutionally protected.¹²⁸ Children have been recognized as "persons" constitutionally,¹²⁹ and have been given rights equal to those of adults in those areas. These rights have been shown to prohibit school authorities from requiring students to tell personal memories and experiences¹³⁰ or requiring a parent's permission for legal abortions.¹³¹

SCHOOL COUNSELORS, CONFIDENTIALITY, AND PRIVILEGED COMMUNICATION

The last step is to relate Privacy to confidentiality and privileged communications. The Right to Privacy has been described for adults and juveniles, but what happens when "private facts" are given to school officials, as in particular, to school counselors? Prosser's third form, of the tort action cases of Right to Privacy, "The Public Disclosure of Private Facts,"¹³² is one of the two bases for confidentiality in the counseling role. The other major basis for confidentiality lies in the "mutuality of confidence" necessary for the counseling relationship to exist.¹³³ It is in confidence that the student-client tells secrets, about the inner self, to the counselor. Since a large part of the counselor's work involves receiving highly personal information, each counselor does well in keeping this trust in proper perspective at all times. The counselor is

expected to maintain the confidential relation of the counseling relationship whether the material is written or spoken. It is, after all, the client's Right to Privacy.

Earlier parts of this paper dealt with actions which did not legally invade privacy (" . . . so long as there is not a breach of confidentiality, trust, or confidential relation.")¹³⁴ Now there are more varieties of limits to the ability to keep all information private and confidential.¹³⁵

The differences depend on which of two kinds of communication is involved. The first, confidential information, is really "an ethical term referring to the decision made by a professional that he will not reveal to others what he has learned in private interaction."¹³⁶ The second, privileged communication, "refers to the legal privilege certain professionals have not to disclose certain information in a court of law."¹³⁷ The early common law privileged communications provisions included only attorney and client and husband and wife, and have been given the privilege in American law, as well. Others such as doctor, priest, accountant, government worker, psychologist, counselor, and social worker, and their clients have been given privileged communication laws in a more limited number of states.¹³⁸

There are nineteen states that have some kind of privilege for the school counselor. (A complete listing of these states is in Appendix I at the end of this paper.)¹³⁹ The way

that a special relationship is determined to be a confidential relationship, and therefore, worthy of having privileged communications, is sometimes determined with Wigmore's four criteria:

1. The communications must originate in a confidence that they will not be disclosed.
2. This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.
3. The relation must be one which in the opinion of the community ought to be sedulously fostered.
4. The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.¹⁴⁰

The school counselor-student relation may, indeed, meet the definition for confidential relationship, and all four of Dean Wigmore's criteria may be met, but many state legislatures don't acknowledge the need for the statute for privileged communication for the school counselor. Arizona doesn't.

Confidential relationship also involves the ethical decisions involved with confidential communications. Even if there is no court room privilege, there is a mutuality of confidence, and therefore the student-client may assume that the communication is confidential in all situations. Even if there is privileged communication in the state, there might still be restrictions from the school administration through board policy or district regulation, or restrictions from state statutes. The counselor should make it clear to the client from the start what information about them may be given to other

persons, who these persons may be, and in what form the information may reach them. This practice eliminates any need to violate confidences in cases of imminent danger, since from the start such information can be defined as not being privileged.¹⁴¹ Exceptions to the privilege include: judicial discretion exception,¹⁴² child victim or abuse exceptions,¹⁴³ future crime exception (e.g., Tarasoff v University of California Board of Regents),¹⁴⁴ malpractice exception or client release of privilege.¹⁴⁵ Client release happens because the privileged communication statute is actually an extension of the client's Fifth Amendment privilege, and therefore, the privilege is the client's, not the counselor's.¹⁴⁶

This waiver of privilege happens automatically whenever a person makes a claim about emotional or mental distress, but it may be done at any time by the person eligible to release privilege. There are times when privilege may not be claimed. Because of the problems of large counselor to student ratio, not every student will have worked with a counselor. If a student is referred to a school counselor, social worker, or school psychologist for psychological testing or examination under Public Law 94-142, for example, the examination alone is not considered a treatment (confidential relationship), and therefore the privilege is not allowed.¹⁴⁷ The treatment must start at the same time as the examination to be considered privileged

information. Also, if the information was not privileged before being disclosed to the counselor, it does not become privileged when given to the counselor.¹⁴⁸

The school counselor has other considerations when determining which information may be kept confidential. Most counselors, in surveys, agrees in theory that their responsibility is first to the student (or staff, or parent)-client, and second to society or the institutions.¹⁴⁹ (The limitations of imminent danger to client or third persons were excepted, of course.) In reality, the school counselor is often in a most difficult position, because of differences in perception between the counselor and some others on the school staff. Two major sources of difference in practice are: (1) the perception of the strength of the professional image of the counselor, and therefore a perception of greater ethical concern for confidentiality; and (2) the kind of professional support present in the district to maintain a good practice of confidentiality.¹⁵⁰

The concerned counselor is often surrounded by some administrators and teachers who don't recognize or accept the counselor's professional status as much as students, parents, and the rest of the staff do. Some administrators and teachers are not sensitive to the concept of confidentiality as an aspect of their profession, and put a lot of pressure on counselors to violate the privacy of the student or student's family

through releasing confidential information.¹⁵¹ Some of the reasons those administrators give are related to real concerns about attitudes of the public, pressures from the public, or "surprises" from parents' complaining. If the counselor's professional identity and trust level is perceived as good, then a consistent ethical practice will help to lessen principal anxiety, and help the principal to lend support.

If a principal or a teacher refers a student to the counselor, then there is some feedback expected, of course. As with the student, the teacher-client should be told the limits of disclosure from the student allowable under Rights of Privacy. Then there will be no false expectations from the referring staff member. The staff member should then be treated as a professional, and given the pertinent information necessary for the classroom relationship, or to lessen the teacher's concern for the student's personal existence.¹⁵² Sometimes there is very little that may be released and the teacher should then be given assurances about the student's welfare, and certainly not be ignored, because they have as much feeling for the students as the counselor. They did, after all, refer the student because of concern for the student.¹⁵³

The rights of the parent and confidentiality of the student communication sometimes creates great problems. As in the previous examples, the parent-client who requests that a counselor have a conference with the son or daughter should have explained

not only what the limits of confidentiality will mean in reporting back to the parent, but also the importance of confidentiality to the counseling relationship in enhancing the student ability to solve the problem. No secret information should be given to the parent of an older student which would break the special relationship with the student.¹⁵⁴

The philosophy of a school district or State Department of Education, about the student, will usually include increasing responsibility and decision-making ability through activities as the student gets older. It would seem that a graduated scale would be a good guide for courts or legal scholars and educators to develop together. A developmental Privacy Rights scale to go with the developmental curriculum and the developmental mental-age scales being used for the general school population. This guide could help as a guide in structuring new district policies, state statutes on a variety of subjects, but particularly those policies concerned with Student Right to Privacy.

A sample scale for developmental Privacy Rights responsibility was developed by Edward Ladd in his 1971 article.¹⁵⁵ Possible categories for school-age young people follow: young children (ages six to nine), older children (ages ten to thirteen), and youths (ages fourteen to seventeen) to complement the eighteen-year-old adult with full rights to Privacy. A fourteen-year-old with a drug problem or pregnancy might be given the confidentiality-level that would not be appropriate

for an eleven-year-old. The scale would reinforce the fact that they should be given ever-increasing responsibility as each gets older.

Some states with counselor privilege have written the statutes to exclude the parent from releasing the privilege, and therefore from receiving the information without the student's permission, while others have included the parent. The policy and procedures of the school district must be clearly examined for identification of those areas where the administration believes it can require the counselor to provide information which a student has shared in counseling sessions.¹⁵⁶ Again, the student must be informed about the limitations.

Other agencies, professionals, and schools should be treated with the same principles in mind from the ethical standards, statutes, administrative rules, and the Right of Privacy for the student. The Colorado Supreme Court in Rugg v McCarty,¹⁵⁷ and a New York case, in Blair v Union Free School District,¹⁵⁸ have shown that school personnel may be held liable for release of information about a student improperly, if it results in "physical or mental distress and/or suffering."¹⁵⁹ An example would be to receive information about family matters, and then release them out of malice toward the family.¹⁶⁰

In a related Right of Privacy matter, in some jurisdictions, it is against the law to record (audio or video) confidential communications without client permission (during

counseling sessions, for example).¹⁶¹ This law is a direct derivation from Dean Prosser's Intrusion form of Invasion of Privacy.

A study was conducted in Georgia with mental-health counselors who asked their clients to sign a consent form before therapy started.¹⁶² The consent was needed to be able to release the client records to the State for computer storage under the Privacy Act of 1974.¹⁶³ The clients who received an explanation of all options, and their rights under the law, and who then realized that they could receive counseling, even if they refused to sign, protected their rights, and only twenty percent signed the release. These results compared with one-hundred percent signing for the ones who were presented with the form, before the first counseling session, and asked to sign without explaining their right to refuse.¹⁶⁴

Group Counselling is a real problem for confidentiality. According to Prosser's Torts,¹⁶⁵ if there is no breach of confidentiality, trust, or confidential relation, the information may be released to an individual or a small group.¹⁶⁶ Wayne Cross, in a 1970 law journal article¹⁶⁷ discussed this topic, and drew the following two conclusions: first, even with oaths for each member of the group for secrecy, there is no guarantee of invasion of privacy for the clients' confidential communications; and second, there are only a few legal problems which would cause worry of privileged testimony, anyway.¹⁶⁸ Two of them are

drugs and past crimes. The Robinson v California¹⁶⁹ case, a United States Supreme Court decision, found that states may not punish drug addicts for their addiction, but they must treat it as an illness.¹⁷⁰ The past crime situation is still a problem which could be handled with a pre-session limit talk on confidentiality. The ethical situations of a member's malicious intent could definitely ruin a confidential group therapy session, and the group leader must have contingencies to try to protect the Privacy Rights of the members.¹⁷¹

What about the changing profession? As better treatment and counseling techniques are created, with the research from this emerging professional role for the school counselor, the counselor could become out-of-date, and find that an accepted procedure, or lack of procedure from the 1960's could create a negligence or malpractice suit for the 1980's. The example of George Washington dying from blood-letting, the recommended practice of 1800, when doctors today could have saved him, points to this problem.¹⁷² The usual and customary practice for the 1950's in the schools would not take into account the increase of both the Right of Privacy, and civil rights of the 1980's student, and the possible legal problems which could ensue.

SUMMARY

This paper has presented the four sections promised in the beginning. The first was a General Statement of the Right of

Privacy primarily through English common law, American case law, and the Warren and Brandeis' "Right to Privacy" articles.¹⁷³

This leading article, as it were, was the first to present the idea of a separate principle for Right of Privacy.

The second section was a review of Prosser's Four categories of past cases for adult Right of Privacy: (1) Appropriation of a person's name or likeness for the defendant's benefit or advantage; (2) Intrusion on the plaintiff's solitude by intentionally and purposefully prying (which could include the case of tape-recording of counseling sessions without permission); (3) Public Disclosure of Private Facts (the closest to the basic daily problems of the school counselor's counseling relationship); and (4) Publicity which creates False Light in the public eye. Professor Bloustein presented the idea of including all of Prosser's forms into an all-conclusive "Affront to Human Dignity." Even though Prosser could find no case which had been decided on so broad a basis, these ideas might be used as an ethical direction for the future.

The third section of the paper covering the Extension of the Right of Privacy to Juveniles showed the great protections for juveniles in both the general field of civil rights, and the specific field of Rights to Privacy. Summaries of case law covering the First, Fifth, Ninth, Fourteenth, and the Twenty-sixth Amendments were included.

The Basic Rights for Juveniles formed the fourth section's coverage of (a) the ethical basis for confidential communications guidelines,¹⁷⁴ and (b) the statutory basis for problems in the school system. Especially in the secondary schools, the counselor was shown as being able to see the total person as an individual with multiple roles and responsibilities. Each of the other staff members might see each student in the role for that activity, and maybe one or two other roles through extra-curricular activities.

The total perspective has formed the new role of the counselor from the old single-purpose vocational-educational counseling to the comprehensive role which adds on short-term personal problem and crisis counseling. The relative importance of confidentiality with the confidential relationship has greatly increased. The importance is one of protecting the student (parent, or staff member)-client's Privacy, rather than increasing the ego-centric view of the person with the title of Counselor. By working with the other interested members of the school staff, and with the parents, the counselor will be working in the atmosphere of recognizing the new responsibility of the new protected student.

NOTES

1. Gerald Dudley and Eldon E. Ruff, "School Counselor Certification: A Study of Current Requirements," 17 The School Counselor 304-311 (Mar. 1970); David Brooks, "Licensure: Do School Counselors Really Need It?" (Report from ASCA Licensure Committee) American School Counselor Association Newsletter 2 (May 1978); American Personnel and Guidance Association, "Ethical Standards," (Jan. 1981).
2. Tom Lovett, "Exploring Potential Counselor Liability in Civil, Criminal Actions," ASCA Newsletter, Part I (Feb. 1980); "Note: Testimonial Privileges and the Student-Counselor Relationship in Secondary Schools," 56 Iowa Law Review 1323-4, 1350 (Jun. 1971); Robert M. Fisher, "The Psychotherapeutic Professions and the Law of Privileged Communications," 10 Wayne Law Review 616 (1964); Carl Swanson and William VanHoose, "Pioneer CASE Guidance Project: A Staff Development Program for School Counselors: Legal and Ethical Concerns," ERIC ED 153 110 (1977); Bogust v Iverson, 102 N.W.2d 228 (Wis. 1960) (Counselor treated as teacher and shouldn't be held accountable for student-client's suicide).
3. Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," 4 Harvard Law Review 193-220 (Dec 15, 1890).
4. William L. Prosser, "Privacy," 48 California Law Review 389-407 (Aug. 1960) (hereinafter, Prosser, 1960); William L. Prosser, "Privacy," Chapter 20 of Handbook of the Law of Torts 804-814 (1974) (hereinafter, Prosser, Torts).
5. Frederick Davis, "What Do We Mean by 'Right to Privacy'?" 4 South Dakota Law Review 6 (Spr. 1959).
6. Ibid.; Prosser, 1960, supra (note 4), p.304; Prosser, Torts, supra (note 4), p. 802.
7. Bennett v Norban, 151 A.2d 476 (Pa. 1959) (public accusation of thefts)
8. Gee v Pritchard, 36 Eng. Rep. 670 (1819) (publication of private letters); Prince Albert v Strange, 41 Eng. Rep. 1171 (1849), affirmed 64 Eng. Rep. 293 (1849) (exhibition of private etchings and publication of catalogue).

9. Abernathy v Hutchinson, 3 L.J. Ch. 209 (1825) (publication in Lancet of lectures by a surgeon delivered to class of which the defendant was a member); Yovatt v Winyard, 37 English Reports 425 (1820) (publication of veterinary recipes obtained secretly by employee)
10. Warren and Brandeis, *supra* (note 3), pp. 193-220.
11. *Id.*, p. 197.
12. *Id.*, p. 197.
13. *Id.*, p. 211.
14. *Id.*: "The press is overstepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread broadcast in the columns of the daily papers. To occupy the indolent, column upon column is filled with idle gossip, which can only be procured by intrusion upon the domestic circle. The intensity and complexity of life, attendant upon advancing civilization, have rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more essential to the individual; but modern enterprise and invention have, through invasions upon his privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury." (p. 196)
15. Prosser, Torts, *supra* (note 4), p. 802.
16. DeMay v Roberts, 9 N.W. 146 (Mich. 1881), relief was granted to a woman who complained of a stranger's breaking in on her childbirth. The court stated, "To the plaintiff the occasion was a most sacred one and no one had a right to intrude unless invited or because of some real and pressing necessity. . . . The plaintiff had a legal right to the privacy of her apartment at such a time, and the law secures to her this right by requiring others to observe it, and to abstain from its violation." (pp. 165-166). (underline added)
17. "Notes," 2 Columbia Law Review 486 (1902); Lisle, "The Right of Privacy (A Contra View)," 19 Kentucky Law Journal 137 (1931); Davis, *supra* (note 5).

18. Prosser, Torts, supra (note 4); Prosser, 1960, supra (note 4); Kent Greenawalt, "Privacy and its legal protections," 2 Hastings Center Studies 45-68 (Sep. 1974); Edward J. Bloustein, "Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser," 39 New York University Law Review 962 (1964).
19. *Roberson v Rochester Folding-Box Company* 64 N.E. 442 (N.Y., 1902) used a picture of a beautiful woman to advertise flour without her consent.
20. New York Civil Rights Law no. 50,51.
21. Prosser, Torts, supra (note 4), p. 803.
22. Shepard's Citations of New York Statutes (1981 Supp.)
23. 50 S.E. 68 (Ga 1905).
24. Prosser, Torts, supra (note 4), p. 804.
25. Restatement of Torts (1939), para. 867. which showed a cause of action for "unreasonable and serious interference with privacy."
26. Rhode Island: *Henry v Cherry and Webb*, 73 A. 97 (R.I. 1909); Nebraska: *Brunson v Ranks Army Stores*, 73 N.W.2d 803,806 (Neb 1955) ("without legislative action, not even the truth of the allegations is a defense"); *Schmiedling v American Farmers Mut. Ins. Co.*, 138 F.Supp. 167 (D.Neb 1955). Texas: *Milner v Red River Valley Publ. Co.*, 249 S.W.2d 227 (Tex 1952); *McCullagh v Houston Chronicle Pub. Co.*, 211 F.2d 4 (5 Cir 1954), cert. denied 348 U.S. 827. Wisconsin: *Judevine v Benzie's-Montanye Fuel and Warehouse Co.*, 269 N.W. 295,302 (Wis 1936), 106 A.L.R. 1443 ("truth is held no defense of the action . . . it is more fitting that the [Right to Privacy] be created by the Legislature"); *State ex rel Distenfeld v Neelen*, 18 N.W.2d 703 (Wis 1949) (used Judevine, supra, as argument against granting judgement on Right of Privacy principle); *Yoeckel v Samonig*, 75 N.W.2d 925-927 (Wis 1956): The defendant was the owner of "Sad Sam's Tavern" in Delafield, Wisconsin. The plaintiff, a patron, entered the ladies rest room. The defendant then entered with a camera and flash attachment and invaded the plaintiff's privacy while in the rest room. The plaintiff demanded the picture be returned, and the defendant refused and left the rest room. When the plaintiff came back to the dining area, the defendant was showing pictures of other ladies in the ladies' rest room. The plaintiff does not know whether the defendant showed her picture

to anyone. "The defendant demurred on the ground that it does not state facts sufficient to constitute a cause of action. The demurrer was sustained and judgement dismissed." The appeal judgement was affirmed. On appeal, Justice Gehl wrote: "In view of what we said and held in the two cases referred to [Judevine, supra, and State et rel. supra] with respect to our lack of power to create a right for the violation of which recovery was there sought, as it is in this case, and particularly because of the refusal of the legislature at two sessions [1951, 1953, not submitted 1955] to recognize even a limited right to protection against invasion of the right of privacy, we are compelled to hold again that the right does not exist in this state." (75 N.W.2d 927).

27. Prosser, Torts, supra (note 4).
28. Prosser, 1960, supra (note 4).
29. Prosser, Torts, pp. 804-807.
30. Fairfield v American Photocopy Equipment Co., 291 P.2d 194 (Calif 1935); Flake v Greensboro News Co., 195 S.E. 55 (N.C. 1938); Kirby v Hal Roach Studios, 127 P.2d 577 (Calif 1942) (the name "John" with a description complete enough to identify the plaintiff, was held to be enough).
31. See notes 20 and 23, and accompanying text, supra.
32. Prosser, Torts, supra (note 4), p. 805.
33. Id., p. 806.
34. Noble v Bell Syndicate, 41 F.Supp 929 (S.D.N.Y. 1941) (comic strip); Lively v Warner Bros. Pictures, 57 F.Supp 40 (S.D.N.Y. 1944).
35. Prosser, Torts, pp. 807-809; Greenawalt, supra (note 18), pp. 54-55; Bloustein, supra (note 18), pp. 972-977; Mitchel Ezer, "Intrusion on Solitude," 21 Law in Transition 63 (1961).
36. Ezer, Ibid.: Mr. Ezer was extremely worried about "Dissemination of Racist Propoganda" in the mails, and wanted to create a right to be free from noxious mails.
37. Welsh v Pritchard 241 P.2d 816 (Mont 1952) (landlord moving in on a tenant).
38. Newcomb Hotel Co. v Corbett, 108 S.E. 309 (Ga. 1921) (hotel room).

39. *Rhodes v Graham*, 37 S.W.2d 46 (Ky 1931); *Fowler v Southern Bell Tel. and Tel. Co.*, 343 F.2d 150 (5 Cir 1965).

40. "Note: Crimination of Peeping Toms and Other Men of Vision," 5 Arkansas Law Review 388 (1951).

41. *People v Trieber*, 163 P.2d 492, 171 P.2d 1 (Calif 1946) (criminal conviction rather than civil); *Roach v Harper* 105 S.E. 2d 564 (W.Va 1958); Annotated California Codes, Penal Code 632 (1981 supp.), "Eavesdropping or recording confidential communications" (also defines "confidential communication" for the state, and is headed as the Invasion of Privacy statute).

42. *Bloustein*, supra (note 18): in 1964, he said that there were only two privacy cases where recovery for mental suffering was allowed without physical impact or physical injury, 39 N.Y.U.L.R. 972-973); *State Rubbish Collection Assn. v Sihrmoff*, 240 P.2d 282 (Calif 1952); and *Kuhr Bros. v Spakas*, 81 S.E.2d 491 (Ga 1954).

43. *Prosser*, 1960, supra (note 4), p. 422-423.

44. William L. Prosser, "Insult and Outrage," 44 California Law Review 40 (1956).

45. *Bloustein*, supra (note 18), p. 973-974.

46. *DeMay v Roberts*, supra (note 16).

47. *Bloustein*, supra (note 18), p. 974.

48. *Silverman v United States*, 365 U.S. 505 (1961); *Wold v Colorado*, 338 U.S. 25 (1949); *United States v Lefkowitz*, 285 U.S. 452 (1932); *Boyd v United States*, 116 U.S. 616 (1886); *Lopez v United States*, 373 U.S. 427, 439 (1963); *Olmstead v United States*, 277 U.S. 438, 469, 476-479 (1928) (Brandeis and Holmes, dissenting) majority said that the wiretap wasn't a trespass, and therefore, the evidence was legally admissible.) Brandeis seemed to have become as worried about intrusion into private affairs. "Discovery and invention have made it possible for the Government, by means far more effective than stretching upon the rack, to obtain disclosure in court of what is whispered in the closet." (277 U.S. at page 473) "The makers of our Constitution . . . recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions, and

their sensations." (277 U.S. at 478) "The common law secures to each individual the right of determining, ordinarily, to what extent his thoughts, sentiments, and emotions shall be communicated to others." (Warren and Brandeis, *supra* (note 3), p. 198).

49. P.L. 93-380 (August 21, 1974) as amended by P.L. 93-568 (Dec. 31, 1974); 20 U.S.C. 1232g (1974); and 45 C.F.R. 99, "Privacy Rights of Parents and Students," (45 Federal Register 30911, May 9, 1980) (hereinafter cited as FERPA).

50. *Id.*, 45 C.F.R. 99: Subpart D, "Disclosure of Personally Identifiable Information from Education Records," para. 99.30-99.37; Subpart B, "Inspection and Review of Education Records," para. 99.11-99.12; "Definitions," para. 99.3.

51. Prosser, Torts, *supra* (note 4), pp. 808-809.

52. *McKenzie v Hucksley*, 112 F.Supp 642 (Okla 1953).

52a. *Gill v Hearst Pub. Co.*, 253 P.2d 441 (Calif 1953) (picture of plaintiff hugging his wife in a public place).

53. FERPA, *supra* (note 50).

54. Prosser, Torts, *supra* (note 4), pp. 809-812; Bloustein, *supra* (note 18), pp. 977-984; Prosser, 1960, *supra* (note 4), pp. 392-398.

55. Prosser, Torts, *supra* (note 4), p. 809.

56. *Melvin v Reid*, 297 P. 91 (Calif 1931); Bloustein, *supra* (note 18), pp. 977-978.

57. *Melvin*, *supra* (note 56); California Constitution, Article I, para. 1; 6 Cal Jur 3d, Assault and Other Wilful Torts, Invasion of Privacy, para. 106.

58. *Miranda v Arizona*, 384 U.S. 436 (1966).

59. *DeGregory v New Hampshire Attorney General*, 383 U.S. 825 (1966).

60. See note 39, *supra*.

61. Prosser, Torts, *supra* (note 4), pp. 809-812.

62. *Nappier v Jefferson Standard Life Ins. Co.*, 322 F.2d 502 (4Cir 1963).

63. *Timperly v Chase Collection Service*, 77 Cal Rptr 782 (1969).
64. *French v Safeway Stores, Inc.*, 430 P.2d 1021 (Or 1967); however, *Kirby v Hal Roach Studios*, 127 P.2d 577 (Calif 1942), said sending a letter to a thousand men was making it public.
65. Henry C. Black, *Black's Law Dictionary*, 4th ed. 370 (1951) (definition of confidential relation); *State ex rel Juvenile Dept. of Multnomah County v Black*, 528 P.2d 130 (Or., 1974) (psychological investigations for court appearances are not a professional confidential relation).
66. FERPA, *supra* (note 49), 45 C.F.R. 99.31 (a)(1).
67. FERPA, *supra*; 99 American Law Reports, Annotated, 2nd ed.: "No appellate court decisions exist involving alleged malpractice arising from psychotherapy or treatment by verbal communications." (99 A.L.R.2d 619-620 at para. 10).
68. Prosser, *Torts*, *supra* (note 4), p. 811.
69. *Kenney v Gurley*, 95 So. 34 (Ala. 1923): The girl was dismissed from school. Her parents were told, in notes home, that since she had been treated for venereal disease, she would not be able to return to school, ever, because she had "not been living right." Trial court decided for the plaintiff, but appeal lost because there was not "extrinsic evidence of malice" nor "intrinsic malice" in the notes sent home from the Dean and the medical director, because the privileged communication was given to the parent only; i.e., a proper time and method. See also, 50 *American Jurisprudence* 2d, Libel and Slander 201-205.
70. *Owens v Scott Publishing Co.*, 284 P.2d 296 (Wash 1955); 50 *American Jurisprudence* 2d, Libel and Slander 278-280; Thomas Burgum and Scott Anderson, *The Counselor and the Law* 79 (APGA Press, 1975).
71. Prosser, *Torts*, *supra* (note 4), pp. 812-814; Bloustein, *supra* (note 18), pp. 991-993; Prosser, 1960, pp. 398-407.
72. *Lord Byron v Johnston*, 35 English Reports 851 (1816); Prosser, *Torts*, p. 812.
73. Prosser, 1960, pp. 400, 422-23.
74. Bloustein, *supra*, p. 991.
75. *Ibid.*

76. Prosser, Torts, pp. 812-814.
77. Gill v Hearst Publishing Co., supra (note 52a) and accompanying text.
78. Gill v Curtis Publishing Co., 239 P.2d 630 (Calif 1952).
79. Gill v Hearst Pub. Co., supra (note 77).
80. Gill v Curtis Pub. Co., supra (note 78).
81. Lord Byron v Johnston, supra (note 70).
82. Accord, Hinnish v Meier and Frank Co., 113 P.2d 438 (Or 1941) (telegram to governor urging him to veto a bill).
83. State ex rel. La Follette v Hinkle, 229 P. 317 (Wash. 1924).
84. Steding v Battistoni, 208 A.2d 559 (Conn 1964).
85. Norman v City of Las Vegas, 177 P.2d 442 (Nev 1947).
86. Davis, 1959, supra (note 5), pp. 4-5. Davis' note 15 says that "in England, breach of a confidential relationship or some sort of copyright infringement are the best bases upon which to win protection for interests similar to those claimed for the right of privacy." Stephenson, Jordan and Harrison v Macdonald and Evand, 69 R.P.C. 10 (C.A.) (1952); and Nichrotherm Electrical Co., Ltd v Percy, R.P.S. 207 (C.A.) (1957); Leon Britton, "The Right to Privacy in England and America," 37 Tulane Law Review 235 (Feb 1963).
87. Oregon Supreme Court gave the following reasoning: "The common law's capacity to discover and apply remedies for acknowledged wrongs without writing on legislation is one of its cardinal virtues," Hinnish v Meier and Frank Co., 113 P.2d 438, 447 (Or 1941); Warren and Brandeis article also used common law arguments (examples on pp. 194-195, 198-201).
88. Calif. Const., Art., para. 1 supra (note 51); Melvin v Reid, 297 P.91 (Calif 1931) (see note 57, supra, and accompanying text; James Madison, The Federalist X (1787): "As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other. . . . The majority . . . must be rendered unable to concert and carry

into effect schemes of oppression. . . . We will know that neither moral nor religious motives can be relied on as an adequate control . . . on the injustice . . . of individuals." (encouraging Constitutional safeguards of civil liberties); See pp. 5, 6, *supra* (Fourth, Fifth, and Fourteenth Amendments).

89. *Pavesich v New England Mutual Life Co.*, *supra* (note 23 and accompanying text) It was held: "The right of privacy has its foundations in the instincts of nature A right of privacy in matters purely private is therefore derived from natural law." (50 S.E. 68 at 69-70); In *McGovern v VanRiper*, 43 A.2d 514 (1945), it was presented: "It is now well settled that the right of privacy having its origins in natural law, is immutable and absolute and transcends the power of any authority to change or abolish it."

90. See p. 8 and note 74, *supra*; Bloustein, *supra* (note 18).

91. Prosser, Torts, *supra* (note 4), pp. 816-817.

92. "Little Mary Ellen," *Parade Magazine* 17 (Nov. 29, 1981); New York Supreme Court, April 9, 1874 trial.

93. M. Chester Nolte, "Legal Aspects of Guidance and Counseling in Colorado," ERIC, ED. 136 107 (Colo. Dept. Ed., 1976) at 42-43.

94. *Tinker v Des Moines School Dist.*, *supra* (note 96): "School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligation to the State." (393 U.S. at 511).

95. *In re Gault*, 387 U.S. 1, 13 (1967).

96. *Tinker v Des Moines School Dist.*, 393 U.S. 503 (1969) (protection of symbolic speech by wearing armbands in protest of the Vietnam War.) It held that: "First Amendment rights applied in the light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech and expression at the school house gate. . . . In order for the State in the person of the school officials to justify prohibition of particular expression of opinion, it must be able to show its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. (393 U.S. at 506-7, 509). Also see *Hatter v L.A. City Sch. Dist.* 452 F.2d 673 (9th Cir 1971) (peaceful protest against school dress code.)

97. *School Dist. of Abington Twp. v Schempp*, 374 U.S. 203 (1963) (no compulsory recitation of prayers in public schools); *Engle v Vitale*, 370 U.S. 421 (1962) (no compulsory recitation of a "Non-denominational" prayer in school); *West Virginia State Bd. of Educ. v Barnette*, 319 U.S. 624 (1943) (upholding student's refusal to salute flag on religious grounds).
98. *Brown v Board of Educ.*, 347 U.S. 483 (1954); *Pierce v Society of Sisters*, 268 U.S. 510 (1925) (education in accordance with religion is granted by the First and Fourteenth Amendment liberties. Struck down an Oregon law requiring public school attendance.)
99. Katherine Lordi, "Accountability versus Privacy: The Right of Institutionalized Emotionally Disturbed Children," 5 Fordham Urban Law Journal 223-231 (1976-1977).
100. *In re Gault*, 387 U.S. 1 (1967), *supra* (note 95) The procedures were: "adequate written notice of pending charges" (p.33), "notice of right to counsel" (p. 41), "privileges against self-incrimination" (p. 55), and the right to confront and cross-examine witnesses (pp. 56-7). Gerald Gault who was 15-years-old, was found guilty of making a lewd telephone call and committed to the State Industrial School. His parents brought a habeas corpus petition and challenged Arizona Juv. Code, said no due process was given son. Dorzen and Reznak, "In re Gault and the Future of Juvenile Law," 1 Family Law Quarterly 1,33 (1967).
101. *In re Winship*, 397 U.S. 358 (1970) A twelve-year-old boy had been charged with committing an act which would have been the crime of larceny, if he had been adult.
102. 247 N.E.2d (1969).
103. N.Y. Family Court Act, para. 744b (McKinney 1970).
104. *In re Winship*, 397 U.S. at 367.
105. *Griswold v Connecticut*, 381 U.S. 479 (1965). The Court reversed the conviction of a Planned Parenthood League Director for providing married couples with information, instructions, and medical advice about birth control methods. (p. 484) The state criminal statute involved was held unconstitutional on the principle that "governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." (p. 485) The Court held that the Fifth Amendment "enables the citizens to

create a zone of privacy which government may not force him to surrender to his detriment." (p. 484) Justice Goldberg's concurring opinion: "The Ninth Amendment to the Constitution may be regarded by some as a recent discovery . . . but since 1791 it has been a basic part of the Constitution which we are sworn to uphold. To hold that a right so basic and fundamental and so deep-rooted in our society as the right of privacy in marriage may be infringed because that right is not guaranteed in so many words by the first eight amendments is to ignore the Ninth Amendment and to give it no effect whatsoever. (P. 491).

106. *Merriken v Cressman*, 364 F.Supp 913 (E.D. Pa. 1973).

107. *Id.*, at 913, 918.

108. *Id.*, at 916, 918-920. The court noted: The facts of the case showed that the letters to the parents, about the program, were "selling devices" aimed at getting parental consent without giving the negative information that would make the parents completely aware of "the relevant circumstances and likely consequences" of the program. There were no statements in the letters about the "self-fulfilling Prophecy" of a student identified, the scapegoat--of those children who decided not to participate, or the final use of the results as the police might find it necessary to learn more about the drug situation in the local community. (This was a joint-funded project between the school and the police department).

109. Lordi, *supra* (note 99), p. 233; Burt, "Developing Constitutional Rights of, in, and for Children," 39 *Law and Contemporary Problems* 118 (Summer 1975): He gave guidelines to evaluate appropriateness of state mental institution's testing methods (but it could be used for general State testing as well): "the proper criteria can readily be drawn from Supreme Court decisions protecting other 'fundamental rights' from state intrusion--that is, has the need for the state intervention been convincingly identified, and proposed to satisfy that need?" (p. 127).

110. Lordi, *supra* (note 99), p. 233.

111. American Personnel and Guidance Association, "Ethical Standards" (January 17, 1981). It was revised in 1971 and most recently in 1981; American School Counselors Assn., Position Paper: Principles of Confidentiality, (1980).

112. W. W. Tennyson, D. Blocker, and R. Johnson, "Student Personnel Records: A Vital Tool. But a Concern to the Public," 9 Personnel and Guidance Journal 888-893 (1964).

113. Robert Boyd, W. Tennyson, and Reynold Erickson, "Changes in Counselor Disclosure of Data from 1962 to 1970," 7 Measurement and Evaluation in Guidance 32-38 (Apr. 1974).

114. FERPA, supra (note 49), para 99.30 (a)(1): "an educational agency or institution shall obtain the written consent of the parent or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in para. 99.31."; Oregon Revised Statutes 336.195: "Student behavioral records shall be released only in the presence of an individual qualified to explain or interpret the records."

115. *Foe v Vanderhoof*, 389 F.Supp 947 (D.Colo 1975).

116. *Roe v Wade*, 410 U.S. 113 (1973).

117. *Doe v Bolton*, 410 U.S. 179 (1973).

118. Lordi, supra (note 99), gives the following explanation: "The 'compelling state interest rule' rule, which the court has repeatedly applied during the last decade, prohibits the states from regulating 'fundamental liberties' unless a compelling state interest for such regulation can be shown; mere rational purposes will not justify state interference with these rights." (p. 229; *Shapiro v Thompson*, 394 U.S. 618 (1969) stated: "Regulations which limit fundamental rights will not be enforced unless they are used to meet a specific goal(s) of the compelling interest."; *Kramer v Union Free School Dist.*, 395 U.S. 621 (1969); *YWCA v Kugler*, 342 F.Supp 1048 (D.N.J. 1972) stated that state invasions into Constitutionally protected areas, including the right to privacy, must be based on a compelling state interest which overrides private rights. (p. 1072).

119. *Foe v Vanderhoof*, 389 F.Supp at 954, citing *Roe v Wade*, 410 U.S. 113, 155-156 (1973): They also indicated that "after careful consideration of the issue involved, we find that the consent statute, as it relates to the necessity of parental or guardian consent in order for minors to obtain legal abortions, is unconstitutional. The statute is overboard in its reach and in violation of the fundamental right to privacy." (389 F.Supp at 954).

120. *Coe v Gerstein*, 376 F.Supp 695 (S.D. Fla 1973) reversed on other grounds, 417 U.S. 281 (1974).

121. Id., at 698; A conflicting case: Doe v Planned Parenthood Association of Utah, 510 P.2d 75 (Utah 1973), Utah Supreme Court declared that "both control devices and information could only be given to minor children with the consent of their parents. The prime responsibility for the moral direction of children rests with the parents. Others may not interfere and superimpose their standard without parent consent.

122. Planned Parenthood of Central Mo., et al. v Danforth. 49 L.Ed.2d 788, 96 S.Ct. 2831, 428 U.S. 52 (1976).

123. Id., at 2831, 2843: they looked at the statutes in Missouri, which allowed treatment, without parental consent, for venereal disease, drug abuses, and pregnancy testing. They also applied the trimester test where she and the attending doctor decide in first trimester.

124. Wisconsin v Yoder, 92 S.Ct. 1526 406 U.S. 205 (1972) (concurring opinion).

125. Id., "I think children are entitled to be heard. One may want to be a pianist or an astronaut. To do so he will have to break from the Amish tradition. If not, his whole may be stunted and deformed. The child, therefore, should be given an opportunity to be heard before the state gives the exemption which we honor today." (92 S.Ct. at 1531).

126. Foe v Vanderhoof, 389 F.Supp at 954, citing Roe v Wade, 410 U.S. 113, 155-156.

127. see note 116, supra.

128. see note 57, 87, 92-95, and accompanying text, supra.

129. see notes 93-95, and accompanying text, supra.

130. Merriken v Cressman, see notes 104-107, and accompanying text, supra.

131. see notes 113-121, and accompanying text, supra.

132. Prosser, Torts, supra (note 4).

133. Jerry Pardue, Willis Whichard, and Elizabeth Johnson, "Limiting Confidential Information in Counseling," 49 Personnel and Guidance Journal 14-20 (Sept. 1970).

134. see note 64 and accompanying text, *supra*: "Talking . . . to an individual or even a small group is allowed as long as there is not breach of contract, trust, or confidential relations."

135. Carl Swanson and William Van Hoose, *supra* (note 2), pp. 43-45.

136. *Id.*, p. 43.

137. *Ibid.*

138. Robert Fisher, *supra* (note 2), pp. 610-611 (attorney-client, husband-wife); "Note: Testimonial Privileges and the Student-Counselor Relationship in Secondary Schools," *supra* (note 2), p. 1332 (rest of list); "Notes and Comments, Functional Overlap Between the Lawyer and Other Professionals: Its Implications for the Privileged Communications Doctrine," 71 Yale Law Review 1226 (1962) (presents case for extensions of the privilege, both historically and contemporarily, and survey results of these professionals: lawyers, judges, marriage counselors, psychiatrists, psychologists, and social workers.).

139. See Appendix I, *infra.*; Lawrence Litwack, et al., "Testimonial Privileged Communications and the School Counselor," The School Counselor 108-112 (Nov. 1969); Lawrence Litwack, "Testimonial Privileged communications: A Problem Reexamined," The School Counselor 194-196 (Jan. 1975).

140. 8 Wigmore, Evidence para 2285 at 527 (McNaughton rev. 1961); Other determinants are court-defined: People's First National Bank and Trust Co. v Ratajski, 160 A.2d 451 (Pa. 1960): "A 'confidential relationship' exists whenever one occupies toward another such a position of advisor or counsellor as reasonably to inspire confidence that he will act in good faith for the other's interests, and the relationship arises where the parties do not deal on equal terms, but, on the one side there is an overmastering influence, or, on the other, weakness, dependence, or trust, justifiably reposed." (160 A.2d at 451); Bass et al. v Smith et al., 56 A.2d 800 Md. 1948) (gift of parent); In re Stroming's Will, 79 A.2d 492 (N.J. 1951) (estate of mother); Blake's Law Dictionary, *supra* (note 61), p. 370: "Notes and Comments", *supra* (note 137), pp. 1230-1232: (they feel that Wigmore's Four Criteria are ambiguous and the courts should probably decide stricter criteria.).

141. Dr. Henry E. Butler, "The Law and American Education" lecture, University of Arizona, Nov. 12, 1981.

142. Mark DeKraai and Bruce Sales, "Privileged Communications of Psychologists," Professional Psychology, in press (They add however, that fortunately, . . . few states include this exception." (p. 17); General Statutes of North Carolina 8-53.4 (1980 Supp.): "School Counselor privilege: No person certified . . . as a school counselor . . . shall be competent to testify in any action, suit, or preceeding concerning any information acquired in rendering counseling services to any student . . . 'provided, however, that the section shall not apply where the student in open court waives the privilege conferred; provided further that the presiding judge may compel such disclosure, if in his opinion, the same is necessary to a proper administration of justice."; Annotated Calif. Codes, Educ 35301: "A school counselor shall disclose information deemed to be confidential . . . to law enforcement agencies when ordered to do so by a court of law, to aid in the investigation of a crime, or when ordered to testify in any administrative or judicial proceeding."

143. Oregon Revised Statutes 418.740 et seq., "Reporting of Child Abuse"; Annotated California Codes (1981 Supp.): Penal 273a, 273ab, 11107, 11110 (Child Abuse, Child cruelty, sex crimes); Kelly Wooster, "The California Legislative Approach to Problems of Willful Child Abuse," 54 California Law Review 1805 (1966); Evelle J. Younger, "Psychotherapists Duty to Report Evidence of Child Abuse," (C.R. 75-29), 58 California Attorney General's Opinion 824 (Nov 1975); Joseph Swoboda, et al., "Knowledge of and Compliance with Privileged Communications and Child-Abuse-Reporting Laws," 9 Professional Psychology 448-457 (Aug., 1978); "Little Mary Ellen," Parade Magazine 17 (Nov. 29, 1981) (First child abuse case-at New York Supreme Court on April 9, 1874. Tried under animal abuse law, and led to later child abuse law in New York.)

144. Tarasoff v Regents of the University of California, 529 P.2d 553 (Ca. 1974) (Tarasoff I) vacated in part, 551 P.2d 334 (Ca. 1976) (Tarasoff II) (leading case, duty of psychotherapist to warn third party in danger from client; Caldwell v Bechtel, Inc., 631 F.2d 999-1000 (1980) (duty by employer to warn employees of silica dust health hazard, using Tarasoff guidelines with employer-employee relationship called "confidential relationship"); Joseph Cocozza and Henry Steadman, "The Failure of Psychiatric Predictions of Dangerousness: Clear and Convincing Evidence," 29 Rutgers Law Review 1084 (Summer 1976); John G. Fleming and Bruce Maximov, "The Patient or His Victim: The Therapist's Dilemma," 62 California Law Review 1025 (1974) (published before Tarasoff I case appeal decided in California Supreme Court, but after the Alameda Superior Court had decided for the psychologists side. Covers possible effect of Tarasoff on subject of confidential and privileged communication): "Note, The Future Crime or Tort Exception to Communication Privileges," 77 Harvard Law Review 730 (1962); Judith Leonard, "A Therapists Duty to Potential Victims: A Nonthreatening View of Tarasoff,"

1 Law and Human Behavior 309 (1977) (presents four options of possible liability in psychologist in a usable form. Identifies high liability options: (1) posttermination, but know danger (high risk), (2) posttermination, should have known danger (medium risk), (3) pretermination, but know danger (low risk with medication, but higher without), (4) pretermination, should have known danger (low risk); 19 American Law Reports 1206 para. 13, "Abandonment or discharge before cure."

145. An example, Ann. Calif. Codes, Evidence 1016: "Exception: Patient-Litigant exception"; Eric Christensen, "The Patient-Litigant Exception to the Psychotherapist-Patient Privilege," 10 Loyola of Los Angeles Law Review 693 (Jun. 1977)

146. Robert Boyd and Richard Hansen, "Problems In Privileged Communication," 50 Personnel and Guidance Journal 276 (Dec. 1971).

147. Triplett v Board of Social Protection, 528 P.2d 563 (Or 1974) Referred by third person for examination, is not treatment); City and County of San Francisco v Superior Court, 37 Cal.2d 227, 233 (Ca); State ex rel. Juvenile Dept. v Brown, 527 P.2d 753 (Or 1974); State ex rel. Juvenile Dept. v Martin, 526 P.2d 647 (Or 1974); Oregon Rev. Stat. 44-040; Ann. Calif. Codes, Evidence 1016, 1017, 1023.

148. Edison Electric Light Co. v United States Electric Lighting Co., 44 F.294 (NY 1890), 45 F. 55 (NY 1891) (Shepard, 1981): U.S. Patent papers already submitted to Patent Office (public papers) are not privileged just because given to someone with privilege. (unprivileged information does not become privileged just because given to someone with privilege. 8 Wigmore, Evidence 2380, 2380a, 829; 107 A.L.R. 1495.

149. *Id.*, p. 277; Boyd, et al., 1974, *supra* (note 113), pp. 36-38.

150. C. H. Patterson, "Are Ethics Different in Different Settings," 50 Personnel and Guidance Journal 254-259 (Dec. 1971).

151. Boyd, et al., 1974, *supra* (note 113), pg. 37; C. H. Patterson, An Introduction to Counseling in the Schools, New York: Harper and Row, 1971.

152. Harley Christiansen, Ethics in Counseling: Problem Situations, (U of A Press 1972) at 31-34, 100-101, 185-188, 192-193.

153. *Ibid.*

154. *Id.*, pp. 14-27, 44-46, 122-127, 139-140.

155. Edward Ladd, "Counselors, Confidences, and the Civil Liberties of Clients," 50 Personnel and Guidance Journal 261-268 (Dec. 1971).

156. Daniel Nesman, Legal Concerns for Counselors (A.S.C.A.), ERIC, ED 137 714, 1977 at 33.

157. *Rugg v McCarty*, 476 P.2d 753 (Colo. 1970). "Action by a creditor against a debtor amounted to outrageous conduct, warranting damages for invasion of privacy for reckless infliction of emotional distress without impact [without physical contact]."

158. *Blair v Union Free School Dist.*, 324 N.Y.S.2d 222: The court held that the act of a school employee in telling information given to the school in confidence by a pupil could "constitute outrageous actionable conduct." "Although the relationship of a student and a student's family with a school and its professional employees probably does not constitute a fiduciary relationship, it is certainly a special or confidential relationship. In order for the educational process to function in an effective manner it is patently necessary that the student and the student's family be free to confide in the professional staff of the school with the assurance that such confidences will be respected. The act of the school or its employees in divulging information given to a school in confidence may well constitute outrageous actionable conduct in view of the special or confidential relationship existing between a student and his family, and the school and its professional employees." (Id., at 228)

159. *Rugg v McCarty*, 476 P.2d at 753.

160. 50 American Jurisprudence 2d, Libel and Slander 203-205 supra (note 69): "Qualified privilege attaches to communications relative to family matters, made in good faith to the proper parties, by members of a family, intimate friends, and third persons under a duty to speak. The qualified privilege attaches to a reply by a defendant to an inquiry, containing the conduct of his child or mate that is made by a parent or a spouse. Also, it seems that a third person may, in a proper case, communicate to a parent supposed facts concerning his child, even though no request therefore was made, if he acts in good faith and pursuant to duty." (50AmJur2d, para 203) "A communication concerning family or household matters is not privileged if there is no duty or intent to be subserved in making the statement. There is no privilege to commit on the domestic occurrences of a private household, so long as they do not rise to the magnitude of crime, or breaches of the peace." (Id., at para. 204).

161. Ann. Calif. Codes, Penal 632, *supra* (note 41)."
162. Catherine Rosen, "Why Clients Relinquish Their Rights to Privacy Under Sign-Away Pressures." 8 Professional Psychology 17-24 (Feb. 1977): 962 clients with no explanation--all signed, and 658 had full explanation--only 20% signed. Athens, Ga. Mental Health Clinic.
163. Privacy Act of 1974, P.L. 93-579 (Dec. 31, 1974).
164. Rosen, 1977, *supra* (note 156), pp. 20-23.
165. Prosser, Privacy, *supra* (note 4); see note 64 and accompanying text, *supra*.
166. *Ibid*.
167. Wayne Cross, "Privileged Communications Between Participants in Group Psychotherapy," 1970 Law and the Social Order 191 (1970).
168. *Id.*, p. 211.
169. *Robinson v California*, 370 U.S. 660 (1962).
170. *Id.*, p. 666.
171. Cross, *supra* (note 160), p. 211.
172. Lawrence Beymer, "Who Killed George Washington," Personnel and Guidance Journal at 249-250 (Dec. 1971).
173. Warren and Brandeis, 1890, *supra* (note 3).
174. American Personnel and Guidance Association:
 1. Ethical Standards, 1981, *supra* (note 1);
 2. Bibliography on the Ethical Responsibilities and Legal Status of Counselors (Oct. 1981)
 3. Selected Bibliography: Ethics Professional Issues (Oct. 1981) American School Counselors Association, Confidentiality, 1980, *supra* (note 108).

APPENDIX I.

SCHOOL COUNSELOR PRIVILEGED COMMUNICATION:

SUMMARY OF FINDINGS*

Group I. Privileged communication, except with student consent.

- | | |
|----------------|---|
| California | - enacted in 1980
- Ann. Calif. Codes, Educ. 35301 (1981 supp.)
- school counselor only |
| Idaho | - enacted in 1971
- Idaho Codes 9-203 (1981 supp.)
- school counselor, school psychologist, and
school psychological examiner |
| Nevada | - enacted in 1973
- Nev. Rev. Stat. 49.290 (1980 supp.)
- school counselor, school psychologist, school
psychological examiner, (teacher, admin-drugs
only) |
| North Carolina | - enacted in 1971
- Gen. Stat. of N. C. 8-53.4 (1980 supp.)
- school counselor |
| North Dakota | - enacted in 1969
- N. D. Cent. Code Ann. 31-01-06-1 (1980 supp.)
- school counselor |
| South Dakota | - enacted in 1972
- S. D. Cod. Laws 19-13-21.1 (1981 supp.)
- school counselor |
| Wisconsin | - enacted in 1968
- Wisc. Stat. Ann. 885.205 (1981 supp.)
- school psychologist |

Group II. Privileged communication, except with student and parent consent.

- | | |
|----------|--|
| Illinois | - enacted in 1979
- Ill. Ann. Stat. 91½-801 |
|----------|--|

- Psychiatrist, physician, psychologist, social worker, nurse, or therapist providing mental health or developmental disabilities services or any person not prohibited by law from providing such services or from holding himself out as a therapist if the recipient reasonably believes that such a person is permitted to do so. Therapist includes any successor to the therapist.
- with consent of parent or guardian if child is under 12; with consent of both recipient and parent if between 12 and 18 years; consent of client if 18 years or older, or guardian if he has been adjudicated incompetent.

Montana

- enacted in 1971
- Mont. Code Ann. 26-1-809 (1981 ed.)
- school counselor, school psychologist, school nurse, school teacher employed by any educational institution.

Group III. Privileged communication, except with parent consent.

Michigan

- enacted in 1963 (original in 1935)
- Mich. Stan. Ann., evid. 27A.2165 (1981 supp.)
- guidance officer, teacher, school executive or other professional person engaged in character building in the public schools or in any other educational institution, including any clerical worker

Oklahoma

- enacted in 1971
- Okla. Stat. Ann. 70-6-115 (1960-81 supp.)
- teacher (school counselor covered, also)

Pennsylvania

- enacted in 1972
- Penn. Cons. Stat. Ann 42-5945 (1981 supp.)
- guidance counselor, school nurse, school psychologist, home and school visitor, or clerical help for them
(parent or guardian consent, if student under 18, or student consent, if student over 18)

Group IV. Privileged communication, but no provision for release of information

Indiana

- enacted in 1965 (revised in 1976)
- Ind. Stat. Ann. (Code Ed.) 20-6.1-6-15 (1981 supp.)
- school counselor

- Maine
- enacted in 1973
 - Maine Rev. Stat. Ann. 20-806 (1981 supp.)
 - school counselors, elem, sec, or post-sec.

- Oregon
- enacted in _____
 - Oregon Rev. Stat. 44.040 (k), (k)
 - certificated staff member in civil action about personal affairs of student or family, which would tend to damage or incriminate student or family; school counselor in civil or criminal about past use, abuse or sale of drugs or alcoholic liquor.

Group V. Privileged communication for drug or alcohol abuse only, (and only during drug counseling and treatment.+)

- Connecticut
- enacted in 1978
 - Conn. Gen. Stat. Ann. 10-154a (1980 supp.)
 - professional employee of school (certificated employee, or teacher where no certificate required, administration officer of a school, school nurse)
(physical evidence obtained from student must be given to law enforcement, and name of student and employee safe)

- Maryland
- enacted in 1971
 - Ann. Code of Md., Educ. 7-410 (1981 supp.)
 - teacher, counselor, principal, or other professional educator

- +South Carolina
- enacted in 1971
 - Code of Law of S. C. 44-53-140 (1980 supp.)
 - any counselor during treatment for drug abuse

- Washington
- enacted in 1971
 - Wash. Rev. Code 69.54.070
 - counselor or rehabilitation worker during treatment for drug abuse.

Group VI. Privileged communication, infectious and communicable diseases only.

- Kansas
- enacted in _____
 - Kan. Stat. Ann. 65-118
 - any person licensed to practice the healing arts, dentist, physician's assistant, licensed social worker, teacher, or school administrator

Group VII. States where legislation didn't get committee approval

Arizona

Iowa

Virginia

West Virginia

Group VIII. States where legislation approved in committee, but failed to get state legislature vote.

Colorado

Minnesota

Florida

New Jersey

Hawaii

Texas

Illinois

Utah

Kentucky

Wisconsin

Massachusetts

Group IX. States where legislation passed the legislature, but vetoed by the governor.

New York (1973)

Group X. States where there is no privileged communication for school counselors, and haven't tried.

Alabama

Georgia

Mississippi

Rhode Island

Alaska

Missouri

Tennessee

Arkansas

Louisiana

Nebraska

(No record of New Mexico, Vermont)

* Daniel H. Nasman, Legal Concerns for Counselors (A. S. C. A.)
ERIC, ED 137 714, 1977

* Personal research in University of Arizona Law Library, 1981

APPENDIX II.

TABLE OF CASES

- Abernathy v Hutchinson (Eng 1825), p. 3, fn 9
Accord, Hinish v Meier and Frank Co. (Or 1941), p. 12, fn 82
- Bass et al. v Smith et al. (Md 1948), p. 21, fn 140
Bennett v Norban (Pa 1959), p. 3, fn 7
Blair v Union Free Scho. Dist. (NY), p. 26, fn 158
Bogust v Iverson (Wis 1960), p. 1, fn 2
Boyd v United States (U. S. 1886), p. 7, fn 48
Brown v Board of Educ. (U. S. 1954), p. 14, fn 98
Brunson v Ranks Army Stores (Neb 1955), p. 5, fn 26
- Caldwell v Bechtel, Inc. (1980), p. 22, fn 144
Carlisle v Fawcett Publications (Ca 1962), p. 5, fn 30
City and County of San Francisco v Superior Ct. (Ca), p. 22, fn 146
Coe v Gerstein (Fla 1973), p. 17, fn 120-121; p. 19, fn 131
- DeGregory v New Hampshire Attorney General (U. S. 1966), p. 9, fn 59
DeMay v Roberts (Mich 1881), p. 4, fn 16; p. 7, fn 46
Doe v Bolton (U. S. 1973), p. 17, fn 117; p. 19, fn 131
Doe v Planned Parenthood Assn. of Utah (Utah 1973), p. 17, fn 119
- Edison Electric Light Co. v United States Electric Lighting Co. (NY 1890), p. 23, fn 148
Engle v Vitale (U. S. 1962), p. 14, fn 97; p. 19, fn 129
Fairfield v American Photocopy Equipment Co. (Ca 1935), p. 4, fn 30
Flake v Greensboro News Co. (NC 1938), p. 5, fn 30
Foe v Vanderhoof (Colo 1975), pp. 17-19, fns 115, 119, 126
Fowler v Southern Bell Tel. and Tel. Co. (5Cir 1965), p. 6, fn 39; p. 9, fn 60
French v Safeway Stores, Inc. (Or 1967), p. 9, fn 64; p. 20, fn 134
- Gee v Pritchard (Eng 1819), p. 3, fn 8
Gill v Curtis Pub. Co. (Ca 1952), pp. 12, fns 78, 80
Gill v Hearst Pub. Co. (Ca 1953), p. 8, fn 52a; pp. 12, fn 77, 79
Griswold v Conn. (U. S. 1965), p. 15, fn 105

- Hatter v L. A. City Dist. (9Cir 1971), p. 14, fn 96
 Henry v Cherry and Webb (RI 1909), p. 5, fn 26
 Hinnish v Meier and Frank Co. (Or 1941), p. 13, fn 87
- In re Gault (U. S. 1967), p. 14, fn 95, 100; p. 19, fn 128
 In re Stroming's Will (NJ 1951), p. 21, fn 140
 In re Winship (U. S. 1970), pp. 14, fn 101, 102, 104
- Judevine v Benzies-Montanye Fuel and Warehouse Co. (Wis 1936),
 p. 5, fn 26
- Kenney v Gurley (Ala 1923), p. 10, fn 69
 Kirby v Hal Roach Studios (CA 1942), p. 5, fn 30; p. 9, fn 64
 Kramer v Union Free Sch. Dist. (U. S. 1969), p. 17, fn 118
 Kuhr Bros. v Spakas (Ga 1954), p. 6, fn 42
- Levey v Warner Bros. Pictures (NY 1944), p. 6, fn 34
 Lopez v United States (U. S. 1963), p. 7, fn 48
 Lord Byron v Johnston (Eng 1816), p. 11, fn 72; p. 12, fn 81
- McCullagh v Houston Chronicle Pub. Co. (5 Cir 1954), p. 5, fn 26
 McGovern v VanRiper (1945), p. 13, fn 89
 McKenzie v Hucksley (Okla 1953), p. 8, fn 52
 Melvin v Reid (Ca 1931), p. 8, fn 56; p. 9, fn 57; p. 13, fn 88
 Merriken v Cressman (Pa 1973), p. 15-16, fn 106-108; p. 19, fn 130
 Milner v Red River Valley Pub. Co. (Tex 1952), p. 5, fn 26
 Miranda v. Arizona (U. S. 1966), p. 9, fn 58
- Nappier v Jefferson Standard Life Ins. Co. (4 Cir 1963), p. 9,
 fn 62
 Newcombe Hotel Co. v Corbett (Ga 1921), p. 6, fn 38
 Nichrotherm Electrical Co., Ltd. v Percy (Eng 1957), p. 13, fn 86
 Noble v Bell Syndicate (NY 1941), p. 6, fn 34
 Norman v City of Las Vegas (Nev 1947), p. 12, fn 85
- Olmstead v United States (U. S. 1928), p. 7, fn 48
 Owens v Scott Pub. Co. (Wash 1955), pp. 11, fn 70
- Pavesich v New England Life Ins. Co. (Ga 1905), p. 4, fn 23
 People v Trieber (Ca 1946), p. 6, fn 41; p. 13, fn 88
 People's First National Bank and Trust Co. v Ratajski (Pa 1960),
 p. 21, fn 140
 Pierce v Society of Sisters (U. S. 1925), p. 14, fn 98
 Planned Parenthood of Cent. Mo. v Danforth (U. S. 1976), p. 17-18,
 fn 122-123; p. 19, fn 131
 Prince Albert v Strange (Eng 1849), p. 3, fn 8
- Rhodes v Graham (Ky 1931), p. 6, fn 39; p. 9, fn 60
 Roach v Harper (WVa 1958), p. 6, fn 41

- Roberson v Rochester Folding-Box Co. (NY 1902), p. 4, fn 19
 Robinson v California (U. S. 1962), pp. 28, fn 169
 Roe v Wade (U. S. 1973), pp. 17, fn 116; p. 19, fn 131
 Rugg v McCarty (Colo 1970), p. 26, fns 157, 159
- Schmiedling v American Farmers Mutual Ins. Co. (Neb 1955), p. 5, fn 26
 School Dist. of Abington Twp. v Schempp (U. S. 1963), p. 14, fn 97; p. 19, fn 128-129
 Shapiro v Thompson (U. S. 1969), p. 17, fn 118; p. 19, fn 127
 Silverman v United States (U. S. 1961), p. 7, fn 48
 State ex rel. Distenfeld v Neelen (Wis 1949), p. 5, fn 26
 State ex rel. Juvenile Dept. v Brown (Or 1974), p. 22, fn 146
 State ex rel. Juvenile Dept. v Martin (Or 1974), p. 22, fn 146
 State ex rel. Juvenile Dept. of Multnomah Co. v Black (Or 1974), p. 9, fn 65
 State ex rel. LaFollette v Hinkle (Wa 1924), p. 12, fn 83
 State Rubbish Collection Assn. v Sihrmoff (Ca 1952), p. 6, fn 42
 Steding v Battistoni (Conn 1964), p. 12, fn 84
 Stephenson, Jordan, and Harrison v MacDonald and Evans (Eng 1952), p. 13, fn 86
- Tarasoff v Regents of the Univ. of Calif. (Ca 1974, 1976), p. 22, fn 144
 Timperly v Chase Collection Service (Ca 1969), p. 9, fn 63
 Tinker v Des Moines Sch. Dist. (U. S. 1969), p. 14, fn 94, 96
 Triplett v Borad of Social Protection (Or 1974), p. 22, fn 146
- United States v Lefkowitz (U. S. 1932), p. 7, fn 48
 Welsh v Pritchard (Mont 1952), p. 6, fn 37
 West Virginia State Bd. of Educ. v Barnette (U. S. 1943), p. 14, fn 97; p. 19, fn 128-129
 Wisconsin v Yoder (U. S. 1972), p. 18, fns 124-125
 Wold v Colorado (U. S. 1949), p. 7, fn 48
- YMCA v Kugler (NJ 1972), p. 17, fn 118; p. 19, fn 127; p. 19, fn 131
 Yoeckel v Samonig (Wis 1956), p. 5, fn 26
 Yovatt v Wingard (Eng 1820), p. 3 fn 9; p. 5, fn 26

APPENDIX III.

REFERENCES CITED

American Jurisprudence (50 Am. Jur 2d), Libel and Slander paras 201 et seq., 278 et seq. (privileged communication and abuse of privilege).

American Law Reports, Annotated

- 106 A. L. R. 1443: "Privacy"
- 107 A. L. R. 1495 "Privilege and examinations"
- 19 A. L. R. 2d 1206: "Continue counseling until problem resolved-malpractice"
- 99 A. L. R. 2d 604,605,619: "Malpractice--standards applicable to counseling profession:"
- 12 A. L. R. 12: "Libel and Slander, Pupils privilege" para 147

American Personnel and Guidance Association. Bibliography on the Ethical Responsibilities and Legal Status of Counselors. (Oct 1981)

_____. Ethical Standards, (Jan 17, 1981)

American Personnel and Guidance Association Ethics Committee. Selected Bibliography: Ethics and Professional Issues. (Oct 1981)

American School Counselors Association. Position Statement: Principles of Confidentiality (1980)

Annotated California Codes (1981 supp.)

- Business and Professional Code: 2936, "Follow Rules of Professional Conduct for Psychologists"
- Evidence Code: 1010 et seq., Psychotherapist-patient privilege
- Penal Code: 273a, 273ab, 273.5, 273d, 11107, 11110, 11161.8, 11165, Child Abuse; 632, (Invasion of Privacy), Eavesdropping on or recording confidential communications.

Beymer, Lawrence. "Who Killed George Washington." 50 Personal and Guidance Journal 249-253. (Dec 1971)

- Black, Henry. Black's Law Dictionary, Fourth Edition. St. Paul, Minn.: West Publishing Co. (1951)
- Bloustein, Edward. "Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser." 39 New York University Law Review 962-1007. (1964)
- Boyd, Robert; Heinson, Richard. "Problems in Privileged Communications." 50 Personnel and Guidance Journal 276. (Dec. 1971)
- Boyd, Robert; Tennyson, W. W.; and Erickson, Reynold. "Changes in Counselor Disclosure of Data from 1962 to 1970." 7 Measurement and Evaluation in Guidance 32-38. (Apr 1974).
- Boyd, Robert; Tennyson, W. W.; and Erickson, Reynold. "Counselor and Client Confidentiality." 12 Counselor Education and Supervision 278-288. (June 1973).
- Brittan, Leon. "The Right of Privacy in England and the United States." 27 Tulane Law Review 235-268. (Feb 1963).
- Brooks, David. "Licensure: Do School Counselors Really Need It?" (Report from ASCA Licensure Committee) American School Counselors Association Newsletter 2 (May 1978)
- Burgum, Thomas; and Anderson, Scott. The Counselor and the Law. Washington, D.C.: A. P. G. A. (1975).
- Burt, Robert. "Developing Constitutional Rights of, in, and for Children." 39 Law and Contemporary Problems 118 (Sum 1975)
- Butler, Henry. "The Law and American Education" lecture, University of Arizona. (Nov 12, 1981)
- California Constitution. Article I, para. 1.; 6 Cal. Jur. 3d, Assault and Other Willful Torts, Invasion of Privacy, para. 106 (Bancroft Whitney, 1973)
- Christensen, Eric. "The Patient-Litigant Exception to the Psychotherapist-Patient Privilege--Caesar v Mountanos, 542 F. 2d 1064 (9 Cir 1976)." 10 Loyola of Los Angeles Law Review 695-708. (Jun 1977)
- Christiansen, Harley D. Ethics in Counseling: Problem Situations. Tucson, Arizona: The University of Arizona Press. (1972)

- Cocozza, Joseph; and Steadman, Henry. "The Failure of Psychiatric Predictions of Dangerousness: Clear and Convincing Evidence." 29 Rutgers Law Review 1084-1011. (Sum 1976)
- Cross, Wayne. "Privileged Communications Between Participants in Group Psychotherapy." 1970 Law and the Social Order 191-211. (1970)
- Davis, Frederick. "What Do We Mean by 'Right to Privacy?'" 4 South Dakota Law Review 1-24. (Spr 1959)
- Dorsen, Norman; and Reznick, Daniel. "In re Gault and the Future of Juvenile Law." 1 Family Law Quarterly 1-5, 33 (Dec 1967) (Part of a special issue about the Gault decision.)
- DeKraai, Mark; Sales, Bruce. "Privileged Communications of Psychologists." Professional Psychology, in press.
- Dudley, Gerald; and Ruff, Eldon. "School Counselor Certification: A Study of Current Requirements." 17 The School Counselor 304-311. (Mar 1970)
- Ezer, Mitchel. "Intrusion on Solitude." 21 Law in Transition 63 (1961)
- Family Educational Rights and Privacy Act Office.
1. Family Educational Rights and Privacy Act of 1974, P. L. 93-380 (August 21, 1974), as amended by P. L. 93-568 (December 31, 1974).
 2. 20 U. S. C. 1232g (1974).
 3. 45 C. F. R. 99, Privacy Rights of Parents and Students (45 Federal Register 30911, May 9, 1980).
- Fisher, Robert. "The Psychotherapeutic Professions and the Law of Privileged Communications." 10 Wayne Law Review 609-654. (1964)
- Fleming, John; and Maximov, Bruce. "The Patient or His Victim: The Therapist's Dilemma." 62 California Law Review 1025-1068. (1974).
- Greenawalt, Kent. "Privacy and its Legal Protections." 2 Hastings Center Studies 45-68. (Sep 1974)
- Guildroy, Jack. "Counselor-Student-Parent Relationships: Ethical Quandries and Legal Quagmires." 113 College Board Review 8-13. (Fall 1979)

- Gunnings, Thomas. "Counselors and Confidentiality." 18 The School Counselor 153-156. (Jan 1971)
- Ladd, Edward. "Counselors, Confidences, and the Civil Liberties of Clients." 50 Personnel and Guidance Journal 261-268. (Dec 1971)
- Larson, A. William. Student Rights: Relevant Aspects for Guidance Counselors (American School Counselor Assn.) ERIC, ED 137 712. (1977)
- Leonard, Judith. "A Therapist's Duty to Potential Victims: A Nonthreatening View of Tarasoff." 1 Law and Human Behavior 309. (1977)
- Lisle, Rufus. "The Right of Privacy (A Contra View)." 19 Kentucky Law Journal 137-145. (Jan 1931)
- "Little Mary Ellen." Parade Magazine 17. (Nov 29, 1981).
(First child abuse case in New York Supreme Court, April 9, 1874)
- Litwack, Lawrence. "Testimonial Privileged Communication: A Problem Reexamined." 22 The School Counselor 194-196. (Jan 1975).
- Litwack, Lawrence et al. "Testimonial Privileged Communication and the School Counselor." 17 The School Counselor 108-112. (Nov 1969)
- Lordi, Katherine. "Accountability versus Privacy: The Plight of Institutionalized Emotionally Disturbed Children." 5 Fordham Urban Law Journal 223-238. (1976--1977)
- Lovett, Tom. "Exploring Potential Counselor Liability in Civil, Criminal Actions, Part I." ASCA Newsletter 3-5. (Feb 1980)
- Madison, James. "Federalist X" (1787) in Roy P. Fairfield, ed., The Federalist Papers, 2nd ed. Baltimore: Johns Hopkins Univ. Press. pp. 16-23. (1981).
- Nasman, Daniel. Legal Concerns for Counselors. (American School Counselor Assn.) ERIC, ED 137 714. (1977)
- New York Civil Rights Law, no. 50, 51. (Right to Privacy law)
- Nolte, M. Chester. Legal Aspects of Guidance and Counseling in Colorado. (Colorado State Dept. of Education). ERIC, ED 136 107. (Jul 1976).

"Note, Crimination of Peeping Toms and Other Men Of Vision." 5 Arkansas Law Review 388-389. (Fall 1951)

"Note, The Future Crime or Tort Exception to Communication Privileges." 77 Harvard Law Review 730-740. (1962)

"Note, Testimonial Privileges and the Student-Counselor Relationship in Secondary Schools." 56 Iowa Law Review 1323-1350. (Jun 1971)

"Notes." 2 Columbia Law Review 486 (1902).

"Notes and Comments, Functional Overlap Between the Lawyer and Other Professionals: Its Implications for the Privileged Communications Doctrine." 71 Yale Law Review 1226. (1962)

Oregon Revised Statutes (1981 supp.)

O. R. S. 336.185, Definitions

O. R. S. 336.195, Student Records Confidential Rules for Inspection or release.

O. R. S. 336.215, Transfer of Student Records to Other Schools or Districts

O. R. S. 418.740 et seq., Reporting of Child Abuse.

Pardue, Jerry; Whichard, Willis; and Johnson, Elizabeth.

"Limiting Confidential Information in Counseling." 49 Personnel and Guidance Journal 14-20. (Sep 1970).

Patterson, Charles. "Are Ethics Different in Different Settings." 50 Personnel and Guidance Journal 254-259. (Dec 1971)

_____. An Introduction to Counseling in the Schools. New York: Harper and Row. (1971)

Privacy Act of 1974, P. L. 93-579. (December 31, 1974)

Prosser, William. "Insult and Outrage." 44 California Law Review 40. (1956)

_____. "Privacy." 48 California Law Review 383-423. (Aug 1960)

_____. "Privacy," pp. 802-818, Chapter 20 of Handbook of the Law of Torts. St. Paul, Minn.: West Pub. Co. (1974).

Rosen, Catherine. "Why Clients Relinquish Their Rights to Privacy Under Sign-Away Pressures." 8 Professional Psychology 17-24. (Feb 1977)

Swanson, Carl; VanHoose, William. Pioneer CESA Guidance Project: A Staff Development Program for School Counselors: Legal and Ethical Concerns. ERIC ED 153 110. (1977)

National Committee for Citizens in Education. Children, Parents and School Records. (1974).

Swoboda, Joseph, et al. "Knowledge of and Compliance with Privileged Communication and Child-Abuse-Reporting Laws." 9 Professional Psychology 448-457. (Aug 1978)

Tennyson, W. W.; Blocker, D.; and Johnson, R. "Student Personnel Records: A Vital Tool But a Concern to the Public." 42 Personnel and Guidance Journal 888-893. (1964)

Warren, Samuel; and Brandeis, Louis. "The Right to Privacy." 4 Harvard Law Review 193-220. (December 15, 1980)

Wigmore, J. H. Evidence in Trials at Common Law (9th vol.) (McNaughton rev., 1961). Boston: Little, Brown
para. 2285, Wigmore's four criteria for confidential relation
para. 2290, Attorney and client
para. 2350, 2380a, Physician and client

Wooster, Kelly. "The California Legislative Approach to Problems of Willful Child Abuse." 54 California Law Review 1805-1831. (1966)

Younger, Evelle. "Psychotherapists Duty to Report Evidence of Child Abuse." (CR 75-29). 58 California Attorney General's Opinions 824-830. (Nov 1975)